

SPECIAL CIVIL APPLICATION NO.8511 OF 1995

Appearance:

Mr. Harin P. Raval, Advocate for the petitioner.

Mr. D.K.Acharya, Advocate for the respondent on a Caveat.

Coram : R.K.Abichandani,J.

12.10.1995

ORAL ORDER:

The petitioner Co-operative Society challenges the judgement and order dated 21.6.1995 of the Gujarat Co-operative Tribunal in Appeal No. 115/94 by which, while upholding the decision of the Board of Nominee dismissing the suit of the petitioner against the deceased defendant No.1 Mahadevlal Ranlal Thakkar and his heirs, allowed the cross objections of his heirs directing the petitioner to refund the amount of Rs. 1,50,000/- with interest to them by 31.7.1995.

It was the case of the petitioner Co-operative Society that an amount of Rs. 3,22,000/- was due to be recovered by the Society from the deceased Mahadevlal Ranlal Thakkar and Amthaji Jamnaji, who had misappropriated the amount of the Society by not crediting the sale price in respect of the stock of the Society which was sold without issuing bills. The relevant period for which Mahadevlal was sought to be held liable was from 1.7.1987 to 9.8.1987. Mahadevlal was the Secretary of the Society and it was alleged that the sale price which was handed over to him was not credited in the Society. It is stated that Mahadevlal unfortunately committed suicide on 9th August, 1987.

It was submitted on behalf of the petitioner that the Auditors' report, as also the report prepared by Mr. Mehta, Inspector of the Bank, clearly indicated that Mahadevlal while he was working as a Secretary, had mis-appropriated the amount. There was a deficit of Rs. 4.93 lacs and the Society made a resolution on 31st August, 1987 in connection with the missing stock of the said value whereby the Chairman was empowered to recover the amount. The heirs of Mahadevlal had participated in the discussion and it was resolved that they would pay Rs. 2.5 lacs. On 27.12.1987, the heirs deposited Rs. 1,50,000/- for fulfilling the liability of Mahadevlal as per the resolution of the Society. It was also submitted that the

Tribunal could not have allowed the cross-objections of the respondent heirs of Mahadevlal and that part of the order was not covered by the provisions of Section 96 of the Gujarat Co-operative Societies Act. It was also submitted that though the Audit report was for a longer period, the amount which is claimed by the Society was confined to the period during which Mahadevlal was the Secretary i.e. from 1.7.1987 to 9.8.1987. It was submitted that the heirs of Mahadevlal had in fact taken recourse to the Civil Court for recovery of the amount of Rs. 1,50,000/- which according to them, was paid to the Society under mistake.

The Board of Nominee, after considering all the relevant aspects of the matter and the material on record, came to a clear finding that the liability of the deceased respondent No. 1 Madhavlal was not at all established. Even the Tribunal, after taking into account the relevant material on record, came to a clear finding that Madhavlal was not liable for the misappropriation. It was held that the stock as on 13th August, 1987 i.e. after the death of Madhavlal was found to be in order and the keys of the godown were infact with the Chairman. It was therefore, held in paragraph 10 of the judgement by the Tribunal that no question of any misappropriation by Mahadevlal could have been arisen. Thus, both the authorities have come to a concurrent finding that the liability of Mahadevlal was not established. The heirs of Mahadevlal had executed some writing that they would pay a sum of Rs. 2,50,000/towards the liability of Mahadevlal and out of that amount, they had paid Rs. 1,50,000/- to the petitioner Society. Both the authorities have rightly held that when the evidence on record shows liability of Mahadevlal was not at all established, his heirs could not be made liable to pay any amount towards the alleged liability of Mahadevlal. The amount of Rs. 1,50,000/- was paid by the respondent Nos. 1/1 to 1/5 in their capacity as heirs of the deceased Madhavlal who was member of the Society and therefore, while allowing their cross objections when the Tribunal has directed the Society to refund the amount, it cannot be said that the Tribunal has acted without jurisdiction or that the dispute was not covered by the provisions of Section 96 of the said Act. Since the amount which was recovered from the heirs of Madhavlal on the footing that Madhavlal was liable to pay to the Society was held to be an illegal recovery, the refund of such amount to the heirs which was paid under mistake, was a just order and this Court would not in Writ powers go behind that order.

The respondent Nos. 1/1 to 1/5 had in their written statement clearly taken up the plea that they should be refunded the amount of Rs. 1,50,000/- which was

wrongly recovered by the Society. Therefore, the cross claim was existing and since the Board of Nominee did not allow that, cross objections were filed by these heirs before the Tribunal which have been rightly allowed. There is absolutely no warrant for interference with the impugned decision and the petition is therefore, rejected.

(R.K.Abichandani,J.)